No. 16,195

United States Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

BIENVENIDO VICTORIO SISON,
Appellee.

On Appeal from the United States District Court for the Northern District of California.

BRIEF OF APPELLANT.

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On Appeal from the United States District Court for the Northern District of California.

BRIEF OF APPELLANT.

JURISDICTIONAL STATEMENT.

The appellee, Bienvenido Victorio Sison, filed a petition for naturalization in the United States District Court for the Northern District of California, Southern Division, on July 10, 1957, under the provisions of Section 324(a) of the Nationality Act of 1940 and Section 405(a) of the Immigration and Nationality Act of 1952.

The petition was granted by order of the District Court dated June 30, 1958. A notice of appeal from said order was filed August 27, 1958.

The jurisdiction of the District Court to entertain the petition for naturalization is conferred by Section

310(a) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1421). The jurisdiction of the Court of Appeals for the Ninth Circuit to review the final order of the District Court is conferred by 28 United States Code 1291. Pursuant to the order of June 30, 1958, granting the petition for naturalization, the appellee took the oath of allegiance on July 15, 1958.

An order granting or denying a petition for naturalization is a final decision within the meaning of Judicial Code Section 128 (28 U.S.C. 1291).

Tutun v. United States, 270 U.S. 568, 46 S. Ct. 425, 70 L. Ed. 738.

STATEMENT OF FACTS.

The appellee was born on December 23, 1921, at Agoo, LaUnion Province, Republic of Philippines. He is married and has four children. His wife and children reside in the Philippines. He was admitted to the United States for the first and only time on July 1, 1956, as a temporary visitor, for medical treatment.

He entered the Philippine Scouts at Fort Mills in the Philippines on July 18, 1941 and served honorably therein in an active duty status from July 18, 1941 to August 22, 1945, at which time his service was terminated by an honorable discharge.

No petition or application for naturalization was filed by appellee, either in the Philippine Islands or in the United States, prior to July 10, 1957, the date of the filing of the petition the granting of which is

the subject of this appeal. The appellee has never been lawfully admitted to the United States for permanent residence.

STATUTES.

The pertinent statutes are set forth in Appendix I. They are here listed, as follows:

Act of August 16, 1940 (54 Stat. 788), Section 2;

Act of October 14, 1940 (the Nationality Act of 1940), Section 324 (formerly 8 U.S.C. 724);

Sections 701 and 702 (formerly 8 U.S.C. 1001 and 1002);

Section 324A (added by Act of June 3, 1948, 62 Stat. 282, and amended by the Act of June 29, 1949 (63 Stat. 202) (formerly 8 U.S.C. 724a);

Section 405a, Immigration and Nationality Act of 1952 (66 Stat. 163) (8 U.S.C.A. 1503a).

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The appellant has stated the following points on appeal:

1. That the Court erred in not sustaining the motion made by the United States of America to deny the petition for naturalization because the petitioner failed to establish eligibility under the Immigration and Nationality Act of 1952.

2. That the Court erred in ruling that the petitioner acquired a "status" under the Nationality Act

of 1940 which was preserved under Section 405 of the Immigration and Nationality Act of 1952.

3. That the Court erred in granting the petition for naturalization in that the petitioner failed to establish eligibility under any applicable naturalization statute.

QUESTION PRESENTED.

The question presented by the statement of points is: Did the appellee have a "status" on December 24, 1952 which was "saved" to him by Section 405(a) of the 1952 Act?

SUMMARY OF THE ARGUMENT.

I. *Appellee is not eligible for naturalization under the provisions of the Immigration and Nationality Act of 1952.*

A. Sections 316, 318, and 328 of the 1952 Act (8 U.S.C. 1427, 1429, and 1439) require that the alien must have been lawfully admitted to the United States for permanent residence. Appellee has not been lawfully admitted for permanent residence.

B. Section 328(a) of the 1952 Act (8 U.S.C. 1439(a)) requires that the petition be filed while the petitioner is still in the service, or within six months after discharge. The petition herein was not so filed.

C. Section 328(d) of the 1952 Act (8 U.S.C. 1439(d)) provides that when the petition is filed later than six months after the termination of the "service," Section 316(a) must be complied with. Under the exception in Section 328(d), "Service within five years immediately preceding the filing of such petition shall be considered as residence and physical presence within the United States." Appellee performed no "service" within the five years immediately preceding the filing of the petition. The "service" had terminated in 1945, some twelve years prior to the filing of the petition in 1957.

D. Appellee does not meet the requirements of Section 329 of the 1952 Act (8 U.S.C. 1440), in that at the time of enlistment or induction he was not in the United States, the Canal Zone, American Samoa, or Swain's Island, as required by said section.

II. *In 1952, and particularly on December 24, 1952, appellee was not eligible to be naturalized under any provisions of the Nationality Act of 1940.*

Two sections of the 1940 Act are apposite: Section 324, as amended, and Section 701, as amended. Section 324 was enacted prior to World War II, and required that the petition be filed while the petitioner was in the service or within six months thereafter.

Sections 701 and 702 were added after the outbreak of World War II. Congress liberalized the provisions by eliminating many requirements. Section 702 per-

mitted natuarilization *outside* the United States by a representative of the Immigration and Naturalization Service.

Sections 701 and 702 expired on December 31, 1946. Section 701 was superseded by Section 324A in 1948 (62 Stat. 281), formerly 8 U.S.C. 724a. Section 324A specifically excluded aliens who enlisted or were inducted in the Philippine Islands.

Section 324 was carried forward in substance by Section 328 of the 1952 Act (8 U.S.C. 1439). Appellee did not file his petition while in the service or within six months after discharge. Appellee had no residence of any kind in the United States prior to his admittance as a temporary visitor on July 1, 1956, over ten years subsequent to the termination of his service.

III. *Appellee had no "status" or "right in the process of acquisition" which could have been preserved by Section 405(a), the "savings clause," of the 1952 Act.*

Appellee did have a "status" under Section 701 prior to December 31, 1946, and could have been naturalized outside the United States under Section 702. This status expired on December 31, 1946, and appellee was thereafter subject to Section 324A, which expressly excluded him as an alien enlisted or inducted in the Philippines.

Section 2 of the Act of August 16, 1940 embraced the Naturalization Act of 1906 (34 Stat. 596), as amended, as the act which contained the then existing "naturalization laws." The Naturalization Act of 1906 was repealed by the Nationality Act of 1940, so that

appellee's status was thereafter to be determined by the provisions of the Nationality Act of 1940.

Section 324(d) of the 1940 Act permitted an applicant who filed a petition later than six months after the termination of "service" to credit "service" performed within five years immediately preceding the filing of the petition in satisfaction of the continuous residence requirement. Appellee's "service" ended August 22, 1945, when he was honorably discharged. A petition filed at any time prior to August 22, 1950 could have utilized such portion of his "service" remaining within the five years immediately preceding the filing of the petition as residence. Subsequent to August 22, 1950, no "status" remained to appellee which could have been saved by Section 405 of the 1952 Act.

ARGUMENT.

The "status" of appellee must be considered under three Nationality Acts: (1) The Immigration and Nationality Act of 1952 (8 U.S.C. 1101 et seq.); (2) the Nationality Act of 1940, Act of October 14, 1940 (54 Stat. 1137); (3) the Act of June 29, 1906 (34 Stat. 596). The Court must determine *first,* whether appellee is eligible for naturalization under existing naturalization laws, the Immigration and Nationality Act of 1952; and second, whether appellee had a "status" on December 24, 1952 which was "saved" to him by Section 405(a), the "savings clause" of the 1952 Act.

I. APPELLEE DOES NOT MEET THE ELIGIBILITY REQUIREMENTS OF THE IMMIGRATION AND NATIONALITY ACT OF 1952.

Sections 328, 316, and 318 of the 1952 Act (8 U.S.C. 1439, 1427, and 1429) require lawful admission for permanent residence; also, if the termination of the military service has been more than six months preceding the filing of the petition, only such service as was performed within five years immediately preceding the filing of the petition may be considered as residence.

Aure v. United States (9 Cir.), 225 F. 2d 88.

Appellee has not been admitted for permanent residence, and his military service occurred almost twelve years prior to the filing of the petition. Section 329 of the 1952 Act (8 U.S.C. 1440) requires that a petitioner must have been in the United States, the Canal Zone, American Samoa, or Swain's Island at the time of enlistment or induction, or have been lawfully admitted for permanent residence subsequent to enlistment or induction. Appellee cannot satisfy either of these requirements.

No claim has been made that appellee is eligible under the 1952 Act. Appellant does not believe that such a claim can be made.

Appellee is not eligible under the Act of June 30, 1953 (67 Stat. 108, 8 U.S.C. 1440(a)), which covers service *after* June 24, 1950.

II. APPELLEE DID NOT HAVE A "STATUS" WHICH WAS "SAVED" TO HIM BY THE "SAVINGS CLAUSE" OF THE 1952 ACT.

The asserted facts are:

(1) Appellee served in the Philippine Scouts from July 18, 1941 to August 22, 1945, when he was honorably discharged.

(2) He was first admitted to the United States on July 1, 1956, as a *temporary* visitor.

(3) The first and only petition for naturalization was filed on July 10, 1957.

Two sections of the 1940 Act are apposite, Section 324, as amended, and Section 701, as amended. Section 324 (8 U.S.C.A. former Section 724), essentially a peacetime provision, was enacted prior to the outbreak of World War II. Section 701 was enacted after the outbreak of World War II.

A. Appellee had no status under Sections 701-702.

Sections 701 and 702 were added to the Nationality Act of 1940 by the Act of March 27, 1942 (56 Stat. 182, 8 U.S.C.A. former sections 1001-1002), providing for a more expeditious method of naturalization for members of the armed forces by eliminating the usual requirements relating to residence, lawful admission, etc. Section 702 provided for naturalization outside the United States by a representative of the Immigration and Naturalization Service.

Section 701 expired by its own terms on December 31, 1946, and was superseded by Section 324A, added by the Act of June 1, 1948 (62 Stat. 281, 8 U.S.C.A.

former Section 724(a)). Section 2 of the 1948 Act provided that the eligibility of any person who filed a petition for naturalization prior to January 1, 1947, under said Section 701 "which is still pending on the date of approval of this Act, shall be determined in accordance with Section 324A of the Nationality Act of 1940, as added by Section 1 of this Act."

Section 324A carried forward many of the liberal provisions of former Section 701, but specifically excluded aliens who were enlisted or inducted in the Philippines.

Thus appellee could not have been naturalized under Section 701, even though he had filed a petition prior to December 31, 1946, if said petition was still pending on December 31, 1946.

Appellee, therefore, had no status under either Section 701 or 324A which could have been saved to him by Section 405(a) of the 1952 Act.

B. Appellee had no status under Section 324.

Appellee had the requisite three years' honorable service in the Army required by 324(a) and would have been entitled to the exemptions specified in Section 324(b) had he filed a petition while still in the service or within six months after the termination thereof. However, naturalization under this section was judicial, and unlike 702, could only take place in courts exercising naturalization jurisdiction. Physical presence in the United States, whether pursuant to a legal admission or not, was essential.

Under Section 324(c), a petitioner who filed under 324(a) but whose service was not continuous, was required to meet the following condition:

> "Petitioner's residence in the United States and State, . . . during any period within five years immediately preceding the date of filing of said petition between the periods of petitioner's service . . ., shall be verified in the petition filed under the provisions of subsection (a), etc."

Three years' service brought such a petitioner within 324(a) but because it was not continuous he had to fill the gaps during five years immediately preceding the filing of the petition with proof of residence in the United States.

Appellee is not concerned with 324(c), as he did not file while in the service or within six months thereafter.

Section 324(d) permitting the filing of a petition beyond the six months after termination of such service, but required compliance with Section 309 of the 1940 Act (8 U.S.C. 709). Section 324(d) provided as follows:

> (d) The petitioner shall comply with the requirements of section 309 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

Section 309 required satisfying the residence and other qualifications of Section 307 (8 U.S.C. 707). Under Section 324(d), it would have been necessary for appellee to have established five years' residence prior to the filing of the petition.

Moreover, Section 307(b) provided that

> "absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence . . ."

The exception contained in Section 324(d) permitted service performed within the five years immediately preceding the date of filing the petition to be counted toward the requisite residence.

To recapitulate: Under 324(a), the petitioner who filed while in the service or within six months thereafter was not required to have continuous residence immediately preceding the date of filing of the petition, in the United States for at least five years and in the State for at least six months.

Under 324(c), if service was not continuous, then petitioner had to meet the residence requirement by filling in the gaps in his service within the five years immediately preceding the filing.

Under 324(d), if the petition was not filed within the six months after service, then petitioner had to satisfy the requirements of Sections 309 and 307 in

proving continuous residence in the United States for at least five years immediately preceding the filing of the petition. Under the exception, military service during the five years could be credited as residence.

The Congressional intent is clearly expressed in Senate Report 1515, Report of the Committee on the Judiciary pursuant to S. Res. 137 (80th Congress, 1st Session, as amended), pp. 703, 704 (Appendix II), where it is stated (Appendix I):

> "When the Nationality Act was enacted in 1940, the nature and scope of our possible participation in World War II could not be accurately anticipated and provided for. As a result, the Congress has found it necessary to enact certain amendments liberalizing naturalization privileges to those aliens who served in our armed forces during the war. Some of these provisions have now lapsed, and those aliens now serving in our armed forces do not enjoy the extremely liberal provisions which were enjoyed during the war period.
>
> At the present time Section 324 of the act provides that a person who has served honorably at any time in the Army, Navy, Marine Corps, or Coast Guard for three years and who, if separated from the service, has been honorably discharged, may be naturalized upon petition while in the service or within six months after termination of his service. No declaration of intention, certificate of arrival, or residence within the court's jurisdiction is required, but with these exceptions the other requirements to naturalization, including racial eligibility, must be complied with. If the alien is in the service at the time of naturalization he may be naturalized immediately

by appearing before a representative of the Immigration and Naturalization Service, accompanied by two citizen witnesses. If, however, he files for naturalization more than six months after completion of his honorable service, he must comply with the general residence requirements of the Act—that is, five years continuous residence in the United States and six months in the State—but his service in the armed forces, wherever it has occurred, is to be considered as residence within the United States and the State.

In cases where the military service was not continuous, residence, good moral character, and attachment to the Constitution, for any non-service period for five years preceding the date of filing the petition must be proved as in regular naturalization proceedings."

Appellee would have been eligible under Section 324 of the 1940 Act had he filed his petition while in the service or within six months after termination thereof. Having filed the petition later, it is incumbent upon him to prove residence in the United States, good moral character, etc., for the five-year period preceding the date he filed his petition, except that military or naval service honorably rendered during that period may be counted as residence.

Yuen Jung v. Barber (9 Cir. 1950), 184 F. 2d 491;

In re Fleischmann (D.C. N.Y. 1943), 49 F. Supp. 223;

Petition of Gislason (D.C. Mass.), 47 F. Supp. 46.

There is no question but that appellee had a "status" for naturalization purposes in 1945-46. He could have filed a petition under Section 701 (8 U.S.C. former 1001) prior to December 31, 1946, and been naturalized outside the United States under Section 702 (8 U.S.C. former 1002). Any such "status" under said section, however, did not survive the lapse of Section 701. Section 324A (supra) excluded aliens enlisted or inducted in the Philippines. The rule in *United States v. Menasche* (1955), 348 U.S. 528, 75 S. Ct. 513, and *Aure v. United States* (9 Cir. 1955), 225 F. 2d 88, therefore, is not applicable. Appellant has no "status" to be saved by Section 405 of the 1952 Act.

De La Cena v. United States (9 Cir. 1957), 249 F. 2d 341.

The Court below has held that appellee, by virtue of his military service, did acquire a "status" which was preserved by the "savings clause" of the 1952 Act (Section 405, 8 U.S.C.A. 1101, note). In so ruling the Court expressly followed the prior decision of the District Court in *Petition of De Mayo* (D.C. Cal. 1956), 146 F. Supp. 759. In the *De Mayo* opinion, at page 760, the Court first quoted 8 U.S.C. 724(d) (Section 324(d) of the 1940 Act), then continued to say, "This section is supplemented by Section 2 of the Act:" The Section 2 referred to is not a part of the 1940 Act but is Section 2 of the Act of August 16, 1940 (54 Stat. 788, 8 U.S.C.A. former Section 389a), amending the Act of August 19, 1937 (50 Stat. 696). This section is quoted in the opinion as follows:

"Hereafter, service in the Regular Army honorably terminated shall be credited for purposes of legal residence under the naturalization laws of the United States, regardless of the legality or illegality of the original entry into the United States of the alien, the certificate of the honorable termination of such service or a duly authenticated copy thereof made by a naturalization examiner of the Immigration and Naturalization Service being accepted in lieu of the certificate from the Department of Justice of the alien's arrival in the United States required by the Naturalization laws; and service so credited in each case shall be considered as having been performed immediately preceding the filing of the petition for naturalization."

The Act of August 16, 1940 was enacted prior to the Nationality Act of 1940 (October 14, 1940). Reference is twice made to "the Naturalization laws." The naturalization laws then existing were contained in the Nationality Act of 1906, as amended. The 1906 Act was expressly repealed by the Nationality Act of 1940. Although the Act of August 16, 1940 was not expressly repealed until the Immigration and Nationality Act of 1952, its provisions were rendered ineffective by the repeal of the 1906 Act.

The Act of August 16, 1940 (8 U.S.C.A. former Section 389a) was a fragmentary statute which amended the Act of August 19, 1937, which in turn had amended the Act of July 1, 1937 (50 Stat. 446). The Act was essentially concerned with "pay" and "reenlistment" in the Army.

The legislative history of the Act clearly indicates that it was special legislation, applicable to a specific class of enlisted men whom Congress desired to protect. The House Committee on Military Affairs reported (Appendix III):

> "The bill H.R. 9158 extends for a three-year period the time for perfecting citizenship. It does not apply to aliens who were not already in the service on July 1, 1937, and would not permit the original enlistment of any alien.
>
> "The proposed legislation includes proper safeguards. Under its terms no alien who has failed to procure his final citizenship papers may be continued in service after June 30, 1943.
> * * *
>
> "The proposed legislation in effect extends to June 30, 1943, the time in which the few remaining alien enlisted men (other than Philippine Scouts) may perfect their citizenship, and credits, for purpose of legal residence under the laws pertaining to naturalization of aliens, the periods of honorably terminated service in the Regular Army." House Report 2111, 76th Congress, 3rd Session (to accompany H.R. 9158), approved as amended in Senate Report 1939.

Generally, where Congress has sought to codify a particular field, intending to cover the whole subject, all prior laws inconsistent with the code are impliedly repealed. *First National Bank v. Pittsburgh, F.W. and C.T. Ry. Co.* (D.C. Pa. 1939), 31 F. Supp. 381.

Such Congressional intent is manifested in Section 301(d) of the 1940 Act, providing that "a person may

be naturalized in the manner and under the conditions prescribed in this chapter and *not otherwise.*" [Emphasis added.]

Furthermore, the previous Nationality Act of 1906 was expressly repealed.

> "It is fundamental that a prior statute must yield to a subsequent valid act of Congress, insofar as the statutes are repugnant."
>
> *Marcello v. Ahrens* (5 Cir. 1954), 212 F. 2d 830, aff'd 349 U.S. 302, 75 S. Ct. 757 (1954).

Had appellee filed his petition at any time prior to December 24, 1952, he would have had to prove residence, good moral character, etc., for the portion of the period not covered by "service."

Yuen Jung v. Barber (9 Cir. 1950), 184 F. 2d 491;

In re Fleischmann (D.C. N.Y. 1943), 49 F. Supp. 223.

On August 22, 1950 he became ineligible under Section 324.

The effect of the District Court's ruling is to give appellee a "status" which he did not have. No "service" credit remained to appellee beyond August 22, 1950—five years from the date of his discharge from the "Scouts." Prior to August 22, 1950 appellee would have had to comply with the requirements of Section 324(d), 309 and 307, which he was unable to do *because he had no residence in the United States.* His only right was to use his military service performed within the required period as a substitute for

residence. This was the only "status" or "right" which appellee had under the 1940 Act. He had no pending declaration of intention or residence to give rise to rights under the 1940 Act as in *Menasche* (supra). No proceeding of any kind had been instituted until 1957. There was no right in existence to be saved by Section 405(a) of the 1952 Act on the effective date of that Act. This Court held in *Aure v. United States* (supra) that "its (Section 405(a) of the 1952 Act) preservation feature should be extended to all substantive rights existing *at the time the statute creating the rights was repealed.*" [Emphasis added.] Having no residence in the United States, there was no eligibility or right to be naturalized to be saved by Section 405(a) on December 24, 1952.

De La Cena v. United States (supra);
Applications of Tano, et al. (D.C. Cal. 1955), 139 F. Supp. 797, aff'd per curiam (9 Cir. 1956) 237 F. 2d 916.

In *Petition of Pringle* (D.C. Va. 1953), 122 F. Supp. 90, aff'd per curiam (4 Cir. 1954), 212 F. 2d 878, the petitioner was eligible on the date of repeal of the 1940 Act, and had an application to file a petition (Form N-400) pending. He was prevented from filing his petition only by administrative delay in processing.

In *In re Jocson* (D.C. Haw. 1954), 117 F. Supp. 528, *Jocson,* like *Aure,* was still in the Navy when he filed his petition.

The decision of the District Court would allow a petitioner with no previous residence in the United

States to file a petition immediately upon arrival in the United States as a temporary visitor, precluding the United States from making any inquiry into the petitioner's moral character, attachment to the Constitution, etc., during the past five years. Honorable military service, however remote, would be accepted in lieu of such proof under Section 324(d). We are not dealing with liberal wartime legislation, such as Sections 701, 324A, or 329 of the 1952 Act; Section 324 was essentially a peacetime provision. There is no indication that Congress intended such sweeping effect to Section 324, but rather a manifest desire that it waive only the minimum requirements imposed upon a petitioner. It was obviously designed to reward those aliens with three years' honorable service who acted promptly, while still in the service or within six months after discharge. As to those who waited, the requirement of residence and proof of good moral character, etc., was imposed, to be obviated only during the five years immediately preceding the filing of the petition by "service"—in other words, during a period when such proof is obtainable through military records.

CONCLUSION.

Appellee had a "status" of eligibility for naturalization under Section 701 of the 1940 Act, but such "status" did not continue beyond December 31, 1946.

Appellee had no residence in the United States during the five years preceding the repeal of the 1940 Act. His military service was performed more than five years prior to said repeal. On December 24, 1952, the effective date of the 1952 Act, appellee had no "status of eligibility" or "right to be naturalized" to be saved by Section 405(a) of said Act. *Aure* and *Pringle* (supra) did have such a status, which continued so long as they were in the service and within six months after discharge. *Menasche* (supra) had, in addition to a pending declaration of intention, some residence which gave rise to "rights in the process of acquisition." His eligibility was contingent upon his completing the required period of residence, which he had begun to do. Had the Nationality Act of 1940 not been repealed, *Menasche* would have been eligible (so far as his residence was concerned) after the passage of time. So also with *Aure* and *Pringle,* so long as they stayed in the service or filed their petitions within six months after discharge. Appellee, who remained in the Philippines for twelve years after his service was terminated, lost whatever rights he had acquired by failing to establish residence in the United States after December 31, 1946. The right to substitute "service" for residence expired August 22, 1950.

It is respectfully submitted that the Court below has erred in holding that appellee had a "status"

which could be saved and in thereupon granting appellee's petition for naturalization.

Dated, March 12, 1959.

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Attorneys for Appellant.

(Appendices I, II and III Follow.)

Appendices.

Appendix I

STATUTES.

Section 324 of the Nationality Act of 1940 (8 U.S.C.A., 1946 Ed. 724) provided in pertinent part:

(a) A person, including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.[1]

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[1]Subsection (a) was amended by the Act of July 2, 1946 (60 Stat. 417) which struck out the phrase "including a native-born Filipino" following "a person". The stricken phrase was no longer necessary since the Act of July 2, 1946 made "Filipino persons or person of Filipino descent" racially eligible for citizenship. Former Section 303 of the 1940 Act (8 USC 703, 1946 ed.) contained the proviso that "nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in Section 724 (324), . . ." Prior to July 2, 1946, Filipinos generally were not racially eligible for naturalization *(Toyota v. United States,* 268 U.S. 402 (1925); *De La Yala v. United States,* 77 F. (2) 968 (C.C.A. 9, 1935) cer. den. 296 U.S. 575). The exceptions were Section 324 and Section 701 of the Second War Powers Act amending the 1940 Act (8 USC 1001, 1951 Pocket Part). The latter section applied only to those serving in World War II.

(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this subchapter except that—

(1) No declaration of intention shall be required;

(2) No certificate of arrival shall be required;

(3) No residence within the jurisdiction of the court shall be required;

(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.

(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and State, good moral character, attachment to the principles of the constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing said petition between the period of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by Section 309. Such verification and proof shall also be made as to any period between

the termination of petitioner's service and the filing of the petition for naturalization.

(d) The petitioner shall comply with the requirement of Section 309 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of records of the executive departments having custody of the records of such service, and such authenticated copies of the records shall be accepted in lieu of affidavits and testimony or depositions of witnesses."

Section 701 of the Nationality Act of 1940, as amended by the Act of December 22, 1944 (58 Stat. 886, 8 U.S.C. Supp. V, Sec. 1001) provided:[2]

"Notwithstanding the provisions of Sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who shall have been at the time of his enlistment

[2]Section 701, as amended, was repealed by section 403 (a) (42) of the present Act.

or induction a resident thereof and who (a) was lawfully admitted into the United States, including its territories and possessions, or (b) having entered the United States, including its territories and possessions, prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyond the continental limits of the United States or has so served may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention, no certificate of arrival for those described in group (b) hereof, and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational tests; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: Provided, however, that (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United

States, members or former members during the present war of the military or naval forces of the non-commissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than December 31, 1946. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service . . ."[3]

Section 702 of the Nationality Act of 1940 (added March 27, 1942, 56 Stat. 182, 187, 8 U.S.C. Supp. V. Sec. 1002) as amended by the Act of December 22, 1944 (58 Stat. 887) provided, in pertinent part:

"During the present war any person entitled to naturalization under Section 701 of this Act, who

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[3]The Act of December 22, 1944 amended the original Act (56 Stat. 182, March 27, 1942) by striking out "who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof" and inserting in lieu thereof the following: "who shall have been at the time of his enlistment or induction a resident thereof and who (a) was lawfully admitted into the United States, including its Territories and possessions, or (b) having entered the United States, including the Territories and possessions prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyond the continental limits of the United States or has so served". The Act also amended the original statute by inserting after the words "no declaration of intention" the following: "no certificate of arrival for those described in group (b) hereof".

while serving honorably in the military or naval forces of the United States is not within the jurisdiction of any court authorized to naturalize aliens, may be naturalized in accordance with all the applicable provisions of Section 701 without appearing before a naturalization court. The petition for naturalization of any petitioner under this section shall be made and sworn to before, and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner or a Deputy Commissioner, which designated representative is hereby authorized to receive such petition in behalf of the Service, to conduct hearings thereon, to take testimony concerning any matter touching or in any way affecting the admissibility of any such petitioner for naturalization, to call witnesses, to administer oaths including the oath of the petitioner and his witnesses to the petition for naturalization and the oath of renunciation and allegiance prescribed by Section 335 of this Act, and to grant naturalization, and to issue certificates of citizenship: *Provided,* that the record of any proceedings hereunder, together with a copy of the certificate of citizenship shall be forwarded to and filed by the clerk of a naturalization court in the district designated by the petitioner and be made a part of the record of the court . . .'"[4]

Section 324A of the 1940 Act (8 U.S.C. 724a prior to 1952) (added by Act of June 1, 1948, 62 Stat. 282, as amended by the Act of June 29, 1949 (63 Stat. 202)), provided in pertinent part:

[4]The 1944 amendment inserted "designated by the petitioner" in lieu of "in which the petitioner is a resident" in the proviso.

"(a) Any person not a citizen who has served honorably in an active-duty status in the military or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or who, if separated from such service was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States or an outlying possession (including the Panama Canal Zone, but excluding the Philippine Islands), or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided,* however, that no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purpose of this section.

"(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this chapter except that—

"(1) he may be naturalized regardless of age, and notwithstanding the provisions of sections 303 and 326 of this Act;

"(2) no declaration of intention, no certificate of arrival, and no period of residence within the United States or any State shall be required;

"(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

"(4) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States;

"(5) when serving in the military or naval forces of the United States, the service of the petitioner shall be proved either (1) by affidavits forming part of the petition, of at least two citizens of the United States, members of the military or naval forces of a non-commissioned or warrant officer grade, or higher (who may be the same witnesses described in clause (4) of this subsection), or (2) by a duly authenticated certification from the executive department under which the petitioner is serving. Such affidavits or certifications shall state whether the petitioner has served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946;

"(6) if no longer serving in the military or naval forces of the United States, the service of the petitioner shall be proved by a duly authenticated certification from the executive department under which the petitioner served, which

shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, and was separated from such service under honorable conditions; and

"(7) notwithstanding section 334c of this title, the petitioner may be naturalized immediately if prior to filing of the petition the petitioner and the required witnesses shall have appeared before and been examined by a representative of the Service.

* * *

"Sec. 2. The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under Section 701 of the Nationality Act of 1940, as amended (8 U.S.C. Supp. V. Sec. 1001) and which is still pending on the date of approval of this Act, shall be determined in accordance with section 324A of the Nationality Act of 1940, as added by section 1 of this Act."[5]

(Sec. 2 of the Act of August 16, 1940 (54 Stat. 788))

Hereafter, service in the Regular Army honorably terminated shall be credited for purposes of legal residence under the naturalization laws of the United States, regardless of the legality or illegality of the original entry into the United

[5]Section 329(d) of the 1952 Act (8 U.S.C. 1440) provides that "the eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under Section 701 of the Nationality Act of 1940, as amended . . . and which is still pending on the effective date of this Chapter, shall be determined in accordance with the provisions of this section".

States of the alien, the certificate of the honorable termination of such service or a duly authenticated copy thereof made by a naturalization examiner of the Immigration and Naturalization Service being accepted in lieu of the certificate from the Department of Justice of the alien's arrival in the United States required by the naturalization laws; and service so credited in each case shall be considered as having been performed immediately preceding the filing of the petition for naturalization.

Appendix II

Report of the Committee on the Judiciary pursuant to S. Res. 137, 80th Congress, 1st Session, as amended. A resolution to make an investigation of the Immigration System. (S. Rep. 1515, 81st Congress, 2nd Session, pages 703-704).

2. ARMED SERVICES PERSONNEL

When the Nationality Act was enacted in 1940, the nature and scope of our possible participation in World War II could not be accurately anticipated and provided for. As a result, the Congress has found it necessary to enact certain amendments liberalizing naturalization privileges to those aliens who served in our armed forces during the war. Some of these provisions have now lapsed, and those aliens now serving in our armed forces do not enjoy the extremely liberal provisions which were enjoyed during the war period.

At the present time section 324 of the act provides that a person who has served honorably at any time in the Army, Navy, Marine Corps, or Coast Guard for 3 years and who, if separated from the service, has been honorably discharged, may be naturalized upon petition while in the service or within 6 months after termination of his service. No declaration of intention, certificate of arrival, or residence within the court's jurisdiction is required, but with these exceptions the other requirements to naturalization, including racial eligibility, must be complied with. If the alien is in the service at the time of naturalization he may be naturalized immediately by ap-

pearing before a representative of the Immigration and Naturalization Service, accompanied by two citizen witnesses. If however, he files for naturalization more than 6 months after completion of his honorable service, he must comply with the general residence requirements of the act—that is, 5 years' continuous residence in the United States and 6 months in the State—but his service in the armed forces, wherever it has occurred, is to be considered as residence within the United States and the State.

In cases where the military service was not continuous, residence, good moral character, and attachment to the Constitution, for any nonservice period for 5 years preceding the date of filing petition must be proved as in regular naturalization proceedings.

The wartime provisions granting special privileges for wartime service have lapsed, but a new section, section 324A, was added to the Nationality Act on June 1, 1948. This new section provides for naturalization of an alien who has served honorably in an active-duty status during World War I or World War II. Racial barriers to naturalization, as well as the status of being an alien enemy, do not apply to persons earning citizenship through such active-duty service. Likewise waived are the requirements for declaration of intention, certificate of arrival, and residence requirements within the United States and State. The applicant, however, must file a petition for naturalization and must include the affidavits of two credible citizen witnesses, attesting to his good moral character and attachment to the Constitution. If he has completed his honor-

able military or naval service, the same must be proved by proper departmental certification. Subsequent dishonorable discharge is ground for revocation of naturalization. It should be noted that wartime service must be in an active-duty capacity but that no particular or specific period of time is necessary. There are two provisions not included in the Nationality Act which relate to service in our armed forces by aliens. One is contained in the Selective Service Act of 1948,[1] section 4 (a) of which forever bars from naturalization any alien who, not being deferrable or exempt from training and service, applies for relief from such training and service prior to his induction. The other provision is contained in the Act of August 1, 1894,[2] which provides that—

> in time of peace no person * * * who is not a citizen of the United States, or who has not made legal declaration of his intention to become a citizen of the United States, * * * shall be enlisted for the first enlistment in the Army.

Various proposals have been made, and in the last session of the Congress the Senate passed S. 2269, to enlist foreigners in our armed services for service overseas and to grant them special citizenship privileges.[3]

(Sec. 405(a) of the 1952 Act (8 U.S.C. 1503(a))

Nothing contained in this Act, lnless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of

[1] 62 Stat. 604; 50 U.S.C. App. 454(a).
[2] 28 Stat. 216.
[3] S. 2269, 81st Cong.

naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in full force and effect. When an immigrant in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

Appendix III

House Report 2111, 76th Congress, 3rd Session (to accompany H.R. 9158) approved as amended in Senate Report 1939, 76th Congress, 3rd Session.

"The Committee on Military affairs to whom was referred the bill (H.R. 9158) to amend the act entitled 'An act for the protection of certain enlisted men of the Army', approved August 19, 1937, and for other purposes, having considered the same, submit the following report thereon, with the recommendation that it do pass.

* * *

"Recognizing the desirability of restricting the enlistment of aliens in the Army, Congress included in the language of the Military Appropriations Act, fiscal year 1938, approved July 1, 1937, a provision prohibiting (with certain exceptions) payment of personnel who are not citizens of the United States. Because the language of this Act would have forced many men of long service out of the Army, and because it appeared proper to grant sufficient time to deserving men to perfect their citizenship status, Congress passed legislation approved August 19, 1937, which permitted reenlistment for the 3-year period ending August 19, 1940, of alien enlisted men who have legally declared their intention to become citizens or who do so during current enlistment or who have been discharged since July 1, 1937, and who also agree to complete expeditiously their naturalization and become citizens of the United States.

"The period during which citizenship status may be perfected is rapidly drawing to an end,

and it is estimated by the War Department that approximately 200 men, nearly all of long service, including some who are veterans of the World War, will have to be discharged because of inability to complete their naturalization. Some of these men have been on foreign service in the Philippines or Panama, where no courts of jurisdiction are available; others have been unable to secure their citizenship because of irregularities in their entrance into the United States or because records have been lost.

"Your committee believes that men who have served this country long and faithfully should be afforded this opportunity to become citizens and continue in service. The bill H.R. 9158 extends for a 3-year period the time for perfecting citizenship. It does not apply to aliens who were not already in the service on July 1, 1937, and would not permit the original enlistment of any alien.

"The proposed legislation includes proper safeguards. Under its terms no alien who has failed to procure his final citizenship papers may be continued in service after June 30, 1943."